

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 935 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DAHIBEN D/O VALABHAI

PREMABHAI CHAUHAN

Versus

HEIRS AND L.R. OF DECD.

PARSHOTTAMBHAI V CHAUHAN

Appearance:

MR SHITAL R PATEL for Petitioner

MR DEVANG LATHIGARA for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/02/2000

ORAL JUDGEMENT

1. This revision application is directed by the plaintiff in regular civil suit NO.52 of 1997 in the court of Civil Judge (J.D.), Borsad against the order of the court below dated 9-4-1997 where it refused to register the civil suit so far as relief of decree of partition is concerned.

2. Learned counsel for the petitioner contended that this order dated 9-4-1997 has been passed without hearing the counsel for the plaintiff.

3. Learned counsel for the respondent submitted that this order is perfectly legal and justified in which this court may not interfere.

4. Having given my thoughtful consideration to the submissions made by the learned counsel for the parties, I am satisfied that the order dated 9-4-1997 is wholly a perverse order and it cannot be allowed to stand. The order dated 9-4-1997, reads as under:

Register the suit for the limited point of injunction. Female member has no right to claim partition under the Hindu Law when there is a male member. To that extent.

5. If the court considers that at the instance of a female member, the suit for partition is not maintainable when the male member is available, before passing of this order, the plaintiff should have been given the notice and opportunity of hearing, which has not been done. Moreover, it is a case of the dismissal of the part of the suit, which can be ordered only after following the principles of nature justice. In case, the order of the court below is allowed to stand it will occasion failure of justice to the petitioner as her suit for partition shall stand dismissed.

6. As a result of the aforesaid discussion this revision application succeeds and the same is allowed and the impugned order of the court below dated 9-4-1997 to the extent where it decline to register the suit of the plaintiff where she claimed partition of the suit property is quashed and set aside. Learned trial court is directed to pass fresh order in this respect after hearing both the parties in accordance with law. Rule is made absolute accordingly with no order as to costs.

zgs/-